

**CHAPTER NO. 866**

**HOUSE BILL NO. 2639**

**By Representatives Fowlkes, Coleman, DuBois, Gresham, Brenda Turner**

**Substituted for: Senate Bill No. 2599**

**By Senator Fowler**

AN ACT to amend Tennessee Code Annotated, Title 30; Title 31; Title 32; Title 34; Title 35 and Title 67, relative to estates and probate.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-4-103(1), is amended by deleting the language "the largest creditor" and by substituting instead the language "any creditor".

SECTION 2. Tennessee Code Annotated, Section 31-4-101(a)(1), is amended by deleting the language "The surviving spouse of an intestate decedent," and by substituting instead the language "The surviving spouse of an intestate decedent who elects against taking an intestate share,".

SECTION 3. Tennessee Code Annotated, Title 32, Chapter 3, Part 1, is amended by adding the following new section, to be appropriately designated:

§ 32-3-1\_\_.

(a) A specific legatee or devisee has a right to the specifically gifted or devised property in the testator's estate at death or if the property has been disposed of and a contrary intention is not manifest during the testator's lifetime:

(1) Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(2) Any amount of a condemnation award for the taking of the property unpaid at death;

(3) Any proceeds unpaid at death on fire or casualty insurance on, or other recovery for injury to, the property; and

(4) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(b) If specifically devised or bequeathed property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting with the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of a specific legatee or devisee under subsection (b) is reduced by any right the legatee or devisee has under subsection (a).

(d) For the purposes of the references in subsection (b) to a conservator, subsection (b) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one (1) year.

(e) For the purposes of the references in subsection (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(1) "Incapacitated principal" means a principal who is an incapacitated person;

(2) No adjudication of the principal's incapacity need occur before death; and

(3) The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal, such presumption rebuttable by clear and convincing evidence of capacity.

SECTION 4. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following new section, to be appropriately designated:

§ 34-6-1\_\_.

Where it is necessary, under the terms of a durable power of attorney to determine the mental or physical incapacity of a patient, a healthcare provider may release personal health information to a licensed physician or licensed attorney at law if the physician or attorney at law signs and furnishes the healthcare provider with an affidavit that the release of information is necessary to determine the mental or physical incapacity of the patient, or of the agent or other fiduciary under a durable power of attorney that was signed by the patient, where incapacity causes the document to come into effect, discontinues its effect or calls for a change in a fiduciary acting thereunder.

SECTION 5. Tennessee Code Annotated, Title 34, Chapter 6, Part 2, is amended by adding the following new section, to be appropriately designated:

§ 34-6-2\_\_.

Where it is necessary, under the terms of a durable power of attorney to determine the mental or physical incapacity of a patient, a healthcare provider may release personal health information to a licensed physician or licensed attorney at law if the physician or attorney at law signs and furnishes the healthcare provider with an affidavit that the release of information is necessary to determine the mental or physical incapacity of the patient, or of the agent or other fiduciary under a durable power of attorney for healthcare that was signed by the patient where incapacity causes the document to come into effect, discontinues its effect or calls for a change in a fiduciary acting thereunder.

SECTION 6. Tennessee Code Annotated, Section 35-1-113(a)(4), is amended by deleting the language "Uniform Gifts to Minors Act" and by substituting the language "Uniform Transfers to Minors Act".

SECTION 7. Tennessee Code Annotated, Section 35-6-104(c)(1), is amended by deleting the current language in its entirety and substituting the following:

(1) That disqualifies the trust for an estate tax or gift tax marital or charitable deduction that would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

SECTION 8. Tennessee Code Annotated, Section 35-50-122(b), is amended by deleting such subsection in its entirety and by substituting instead the following language:

(b) A trustee is authorized, but not required, to divide any trust into two (2) or more separate trusts, of equal or unequal value, in order to create one (1) or more trusts entirely exempt from the generation-skipping tax and one (1) or more trusts entirely subject to the generation-skipping tax. Other terms and provisions of both trusts will remain substantially identical in all respects to the original trust.

SECTION 9. Tennessee Code Annotated, Title 35, Chapter 50, Part 1, is amended by adding the following new section, to be appropriately designated:

§ 35-50-1\_\_.

Where it is necessary, under the terms of a trust to determine the mental or physical incapacity of a patient, a healthcare provider may release personal health information to a licensed physician or licensed attorney at law if the physician or attorney at law signs and furnishes the healthcare provider with an affidavit that the release of information is necessary to determine the mental or physical incapacity of the patient, or of the settlor, or of the donor, or of the trustee, or of the agent or other fiduciary under a trust that was signed by the patient where incapacity causes the document to come into effect, discontinues its effect or calls for a change in a fiduciary acting thereunder.

SECTION 10. Tennessee Code Annotated, Section 67-8-414, is amended by deleting the language "fifteen (15) days" and substituting the word and language "forty-five (45) days".

SECTION 11. Tennessee Code Annotated, Section 34-1-109, is amended by adding the following language as a new subsection:

(c) The social security number of the respondent shall be given to the duly appointed fiduciary and to the clerk to be placed in the court record and used in the issuance of letters of guardianship or conservatorship and in any other manner approved by the court.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 20, 2004



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES



JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 8<sup>th</sup> day of June 2004



PHIL BREDESEN, GOVERNOR